

## 48A C.J.S. Judges § 311

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 2. Mode and Sufficiency of Raising Objection

###### a. General Considerations

## § 311. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

**A objection to the judge should be properly made by petition or motion, conforming to the applicable statute.**

In order to invoke the jurisdiction of the court to pass on disqualification of a judge,<sup>1</sup> the objection to the judge should be properly made<sup>2</sup> by petition<sup>3</sup> or motion,<sup>4</sup> conforming to the statute<sup>5</sup> in force at the time the application is made.<sup>6</sup>

Except as otherwise provided by statute, the objection cannot be made by way of challenge,<sup>7</sup> demurrer,<sup>8</sup> or plea.<sup>9</sup> An informal request to the court, or failure to comply with the statute because of an expectation of denial, however well founded, cannot be substituted for compliance with the statute.<sup>10</sup>

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### Footnotes

<sup>1</sup> Ariz.—*Jenkins v. Skelton*, 21 Ariz. 663, 192 P. 249 (1920).

Ky.—*Tolliver v. Commonwealth*, 165 Ky. 312, 176 S.W. 1190 (1915).

<sup>2</sup> Ga.—*Williamson v. State*, 40 Ga. App. 496, 150 S.E. 464 (1929).

- 3 U.S.—*In re Fox West Coast Theatres*, 25 F. Supp. 250 (S.D. Cal. 1936), order *aff'd*, 88 F.2d 212 (C.C.A. 9th Cir. 1937).
- Pa.—*In re Crawford's Estate*, 307 Pa. 102, 160 A. 585 (1931).
- 4 Fla.—*Cascone v. Foster*, 774 So. 2d 773 (Fla. 1st DCA 2000).
- Mont.—*State ex rel. Woodahl v. District Court of First Judicial Dist., In and For Lewis and Clark County*, 167 Mont. 514, 540 P.2d 312 (1975).
- W. Va.—*State ex rel. Preissler v. Dostert*, 163 W. Va. 719, 260 S.E.2d 279 (1979).
- Liberal construction of motion**
- Ill.—*People v. Ganci*, 57 Ill. App. 3d 234, 14 Ill. Dec. 798, 372 N.E.2d 1077 (1st Dist. 1978).
- 5 U.S.—*U.S. v. Bravo Fernandez*, 792 F. Supp. 2d 178 (D.P.R. 2011).
- Fla.—*Carrow v. The Florida Bar*, 848 So. 2d 1283 (Fla. 2d DCA 2003).
- Ill.—*In re Estate of Wilson*, 238 Ill. 2d 519, 345 Ill. Dec. 583, 939 N.E.2d 426 (2010).
- 6 Okla.—*Bonham v. State*, 1911 OK CR 291, 6 Okla. Crim. 230, 118 P. 149 (1911).
- 7 Ala.—*Wright v. State*, 3 Ala. App. 24, 58 So. 68 (1912).
- 8 N.J.—*State v. Bolitho*, 103 N.J.L. 246, 136 A. 164 (N.J. Sup. Ct. 1927), *aff'd*, 104 N.J.L. 446, 146 A. 927 (N.J. Ct. Err. & App. 1927).
- 9 Ala.—*Wright v. State*, 3 Ala. App. 24, 58 So. 68 (1912).
- 10 U.S.—*Galella v. Onassis*, 487 F.2d 986, 17 Fed. R. Serv. 2d 1205, 28 A.L.R. Fed. 879 (2d Cir. 1973).